12.9.94

CF0000057655

CRA 1394 /94

(2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 64 Name भाडवी मंगू

Father's Name सुकारु Residence ग्राम - थाना-केशरकुल

Age 26 Sentenced to आजीवन कारावास on

30.8.94 under Section 302 I.P.C. by III अति० सत्र न्याय० जगदलपुर

S.T.No. 290/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 30.8.94

3. Date on which Appelisent :- 10.9.94

4. Whether the prisoner wished to be represented or not Yes/No.

No. 64 Name भाडवी मंगू S/o सुकारु

Continued in 12/92 (Feb) 29/8/94 Jail Jagdalpur Bastar

No. 329 /Octgon./94 Dated 10/9/94

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur Bastar together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./
Sub Jail.
जगदलपुर

Date of receipt in C.J.M's Office.

Date of receipt of record of accompany. 12.9.94

Memo of Appeal of the Appelliate Court.

No. 26/94 Dated 13.9.94

Forwarded to the H'ble Sessions Judge Jagdalpur.

C.J. Magistrate

Date of receipt of Appelliate Court.

XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. App. No. 1394/94 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

19.01.2006

Shri K.K. Singh, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Alok Bakshi, Government Advocate for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C. appellant Madvi Gangu has questioned the legality of judgment of conviction and order of sentence dated 30.8.1994 passed by learned 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.290/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Sodi Raju convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that in the morning of 10.2.1993 accused/appellant demanded Rs.100/- from deceased Raju, in the first instance deceased Raju denied to give the money but later on he paid Rs.100/- to the accused/appellant. On the same day at about 3.00 p.m. accused/appellant again demanded money from deceased Raju

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and he again gave the money. On account of this money, some quarrel took place between the deceased & the accused/appellant, therefore, accused/appellant attacked the deceased with the axe, as a result of which deceased Raju received injuries on his head. Deceased Raju was sent to N.M.D.C. Hospital, Kirandul for treatment and thereafter, he was taken to Waltair (Visakhapatnam), but he could not recover there. He was again sent to Kirandul Hospital where he died on 1.6.1993. During investigation, on 10.2.1993 a report was lodged by PW-1 Sundri Bai, mother of deceased. The Investigating Officer registered the FIR (Ex.P-1) and took into possession the axe under Ex.P-3. He also took into possession blood stained soil and plain soil under Ex.P-6. Site plan (Ex.P-6) was prepared by the Patwari. The Investigating Officer prepared the Panchanama (Ex.P-10) of the dead body of deceased Raju after giving notice to the Panchas, sent the body for postmortem examination to Primary Health Centre, Kirandul, where Dr. A.K. Singh (PW-4) conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-11. PW-4 Dr. A.K. Singh opined that the cause of death of deceased Raju was paralysis on many vital parts leading to death.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada, who in turn committed the case to learned Sessions Judge, Jagdalpur from where

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/appellant examined eight witnesses. Statement of accused/appellant was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing learned Additional Public Prosecutor & learned counsel for the accused convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment.

We have heard Shri Singh, learned counsel for the accused/appellant and Shri Deo, Addl. Public Prosecutor with Shri Bakshi, Government Advocate for the State/respondent.

The homicidal death of deceased Raju is not in dispute.

The involvement of the accused/appellant in committing the crime in question stands established by the evidence of PW-1 Sundri Bai- mother of deceased, who witnessed the crime and also lodged the report at the police station. Apart from that deceased Raju made dying declaration (Ex.P-9) before the doctor (PW-4) on 10.2.1993 in which he has stated that accused/appellant herein attacked him with the axe thrice on his head on account of dispute regarding payment of

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

money to the accused/appellant by the deceased. Dying declaration stands corroborated by the evidence of PW-1 Sundri Bai, therefore, the involvement of the accused/appellant in the crime in question is established.

Learned counsel for the accused/appellant argued that from the evidence and facts of the case the offence against the accused/appellant does not travel beyond Section 304 Part-II of the Indian Penal Code.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

Having heard learned counsel for the parties, we have perused the evidence and impugned judgment.

It is an admitted position that on the fateful day the accused/appellant demanded money from the deceased Raju for purchasing liquor, which was initially denied by the deceased, but later on same was paid by him. Thereafter, the accused/appellant again demanded money from the deceased and on account of that some dispute arose between the deceased and the accused and all of a sudden the accused picked up the axe and assaulted the deceased on his head without any pre-plan or premeditation in a sudden fight, in a heat of passion and deceased died after four months of the incident on account of paralysis and not getting proper treatment. Therefore, from

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the above facts it can be said that the element of intention of causing death is missing but at the time of attacking on the head of deceased the accused/appellant was having definite knowledge that by causing injury on the head he may likely to cause death, therefore, the offence against the accused/appellant under Section 304 Part-II of the IPC is made out.

In the result, the appeal is partly succeeds. Conviction awarded to appellant Madvi Gangu under Section 302 of the I.P.C. is hereby set aside, instead thereof appellant Madvi Gangu is convicted for commission of offence punishable under Section 302 Part-II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years. Appellant Madvi Gangu is in custody since 11.2.1993 i.e. for more than 13 years, therefore, he be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

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